

TABLE OF CONTENTS

<u>Paragraph and Subject</u>	<u>Page</u>	<u>Date</u>	<u>Trans. No.</u>
<u>Chapter 2-1300 Review Process</u>			
Table of Contents. . . . .	i	06/02	02/01
1 Purpose and Scope. . . . .	1	06/02	02/01
2 Authority. . . . .	1	06/02	02/01
3 Responsibilities of the FAB Units in DO's. . . . .	2	06/02	02/01
4 Responsibilities of FAB, National Office. . . . .	6	06/02	02/01
<u>Exhibits</u>			
1 Medical Benefit Letter . . . . .		06/02	02/01

1. Purpose and Scope. This chapter describes the general policies and regulatory authorities that govern the issuance of decisions by the Final Adjudication Branch (FAB) on claims under the EEOICPA. It also describes how tasks associated with the issuance of such decisions are divided between the FAB units in the District Offices and the National Office.

2. Authority.

a. Necessity for Specific Objections. The regulations governing the issuance of FAB decisions are set out at 20 C.F.R. §§ 30.310 through 30.319. Section 30.310(b) states that a claimant has 60 days after the DO issues a recommended decision to file any specific objections to the findings of fact or conclusions of law, unless this period is extended by the FAB. Section 30.311(a) states that if no specific objections are filed within 60 days, the FAB will issue a decision affirming the DO's recommended decision, "even if the claimant requests a hearing." Therefore, a claimant should file a specific and timely objection in order to have either a hearing or a review of the written record by the FAB. However, the hearing representative must use his/her discretion if there is any evidence that a hearing or a review of the written record is necessary.

b. Timely Action on Claims by the FAB Required. In order to guarantee that delays do not occur in the adjudication process, 20 C.F.R. § 30.316(c) imposes a one-year limit on the amount of time a recommended decision can be pending at the FAB. This means that a recommended decision awaiting either a hearing or a review of the written record at the FAB will automatically be considered affirmed on the one-year anniversary of the date the record was received from the DO.

c. Division of Tasks between FAB Units in DO's and the National Office. Since FAB decisions on claims must be issued in a timely manner, some tasks associated with the issuance of such decisions are the responsibility of FAB units in the DO's and others are the responsibility of the FAB unit in the National Office. In addition, certain

2. Authority. (Continued)

types of these decisions will be issued by FAB units in the DO's and others will only be issued by the FAB unit in the National Office. This division is described in paragraphs 2-1300-3 and 2-1300-4.

3. Responsibilities of the FAB Units in DO's. This paragraph describes the processing of claims at the FAB units located in the various DO's. The procedures cover the receipt of case records from the DO following the issuance of a recommended decision, initial screening of the file for possible transfer to the FAB unit at the National Office, issuing remand orders, conducting hearings and reviews of the written record, and issuing a final decision on the claim.

a. Receipt of Case Record from DO. When the DO issues a recommended decision on a claim, it will automatically forward the case record in such claim to the FAB unit located in that DO. In an attachment to the recommended decision, claimants are advised to submit their objections, waivers, and requests for a hearing to the FAB unit in the DO which issued the recommended decision. These submissions must be promptly identified in the mailroom and associated with the case record for initial screening.

b. Initial Screening. The record and any written submissions from the claimant will undergo initial screening by FAB to determine if the requirements for review of the claim by FAB have been met and whether the claim meets the criteria for transfer of the case to the FAB unit at the National Office. See PM 2-1300 3(c)

(1) Specific Objections. The claimant should file specific objections to at least one finding of fact or conclusion of law contained in the DO's recommended decision in order to obtain either a hearing or a review of the written record of the claim. The submission of a general statement that only disagrees with the recommended decision is generally insufficient to meet this regulatory requirement. However, the case reviewer should use appropriate discretion and judgement when making this determination.

3. Responsibilities of the FAB Units in DO's. (Continued)

(a) Timeliness. Objections will be considered to be timely submitted to the FAB if the envelope containing them is postmarked no later than the 60<sup>th</sup> day after the date of issuance of the DO's recommended decision. (The date of the recommended decision is not included in the 60 days.) If the 60<sup>th</sup> day falls on a non-business day, the envelope must be postmarked on the next business day for the objections to be considered timely filed.

(b) Extension of the Time Period. If the claimant submits an objection to the DO's recommended decision before the 60-day time period expires but does not clearly identify a specific finding of fact or conclusion of law, the FAB has the discretion to extend the time period to give the claimant the opportunity to identify an objection as specifically as possible. In this situation, the FAB may decide to write to the claimant advising him/her of the deficiency and providing an opportunity for submission of specific objections. Moreover, when a hearing is held, the FAB hearing representative also has the discretion to permit further specific objections at the hearing.

(c) Waiver of Untimely Objections. Any objection not presented to the FAB within the allotted time period (or any extension of the time period) is deemed waived by the claimant and may not be presented to the FAB at a later time, even if the claimant had previously presented the identical issue to the DO. The hearing representative should use their discretion in making this determination.

- (2) Request for a Hearing. The claimant must make any request for a hearing on the claim within the period of time allotted following the issuance of the DO's recommended decision. If the case is in

3. Responsibilities of the FAB Units in DO's. (Continued)

posture for a hearing, the DO's FAB examiner conducting the initial screening of the case must decide if it meets the criteria for transfer to the FAB unit in the National Office.

(a) Timeliness. A request for a hearing will be timely if the envelope containing it is postmarked no later than the 60<sup>th</sup> day after the date of the DO's recommended decision. (The date of issuance of the recommended decision is not included in the 60 days.) If the 60<sup>th</sup> day falls on a non-business day, the envelope must be postmarked on the next business day for the hearing request to be timely.

(b) National Office Extension of the Time Period. Extensions of the 60-day period for requesting a hearing are to be determined at the discretion of the FAB.

c. Transferring Cases to the National Office FAB. When considering transfer, the DO FAB should coordinate with the NO FAB in determining whether the claim should be transferred. The FAB has broad discretion in determining the standards to be applied for case transfers. Factors that may determine the need for a case transfer include the location of the claimant's residence and/or the complexity of the claim under consideration. Cases not transferred to the NO FAB will be assigned to personnel in the FAB unit at the DO for further action, as appropriate.

Mail that continues to come into the FAB unit in the DO on transferred cases must be promptly identified in the DO mailroom and immediately forwarded to the FAB unit in the National Office for association with the case record.

d. Remanding a Case to the DO. Any claim that is received by the FAB is expected to be free of technical errors or other deficiencies. As such, the FAB unit at the DO may issue an order on its own prerogative vacating a recommended decision and remanding the claim to the

3. Responsibilities of the FAB Units in DO's. (Continued)

DO for further development. This action can occur regardless of whether or not the claimant requests such action. Pursuant to 20 C.F.R. § 30.317, an order of this type does not constitute a "decision" of the FAB on the claim.

e. Decisions Adopting and Affirming the Recommended Decision. The FAB can issue a decision without first holding a hearing or reviewing the written record of the claim in the following situations:

(1) Waiver of All Objections to the Recommended Decision. For those cases in which the claimant submits a written statement waiving the right to object to the entire recommended decision, regardless of whether such decision recommends accepting or rejecting the claim, the FAB will (if it agrees with the recommended decision) issue a decision that both adopts the DO's findings and affirms the recommended decision. If a waiver is received, the FAB can issue its decision promptly instead of waiting for the 60-day period in 20 C.F.R. § 30.310(b) to expire. The decision will be accompanied by a cover letter explaining that the FAB's decision will become final in 30 days. The decision is not final for 30 days due to the fact that the claimant may wish to file a reconsideration during that period. If any or all benefits were denied, the case record should remain with FAB during this 30-day period. If a reconsideration is not filed, the file should be returned after 30 days.

(2) No Response to the Recommended Decision within 60 Days. For those cases in which the claimant fails to present any objections to the findings of fact or conclusions of law contained in the recommended decision within 60 days, the FAB has the discretion to issue a decision adopting the DO's findings and affirming the recommended decision. This decision will also be accompanied by a cover letter explaining that the FAB's

3. Responsibilities of the FAB Units in DO's. (Continued)

decision will become final in 30 days. If any or all benefits are denied, the case record should remain with FAB during this 30-day period. If a reconsideration is not filed, the file should be returned after 30 days.

(3) Partial Waivers/Partial Objections. If the claimant only waives the right to object to part of the recommended decision, the FAB has the discretion to issue a decision adopting and affirming that part of the recommended decision. The FAB also has the discretion to issue a decision adopting and affirming any part of a recommended decision to which the claimant does not specifically object. These types of decisions will be accompanied by a cover letter explaining that the decision of the FAB only applies to part of the claim and the decision will become final in 30 days. The cover letter also notifies the claimant that the case record will be retained by the FAB until it has acted on the remainder of the claim. If any benefits are denied, the case record should remain with FAB during the 30-day period in which a reconsideration can be filed.

f. Hearings Conducted by the FAB Unit at the DO. Cases that are in posture for a hearing and are not transferred to the National Office FAB will be assigned to a FAB hearing representative in the DO for further action.

4. Responsibilities of the FAB, National Office. This paragraph describes the processing of claims at the FAB unit located in the National Office. These procedures cover the receipt of case records from the DO FAB units, initial screening of the file, and issuing remand orders.

a. Initial Screening in the National Office. After it is received from the DO FAB units, the case record and any written submissions from the claimant will undergo initial screening to confirm the basis for transfer to the FAB unit at the National Office, and also to determine if the claim is in posture for further review.

4. Responsibilities of the FAB, National Office. (Continued)

(1) Confirming Transfer. Once the screener confirms the claimant raised specific objections and made a timely request for a hearing or the FAB exercised its discretionary authority, the case record is to be transferred to the NO FAB. In this situation, the FAB will write to the claimant to notify him or her of the transfer of the claim to the National Office and to provide the mailing address for further correspondence.

(2) Remanding a Case to the DO. At any time before it issues a decision on a claim, the FAB unit located at the National Office may instead issue an order vacating the recommended decision and remanding the claim to the DO for further development and the issuance of a new recommended decision, whether or not the claimant requests such action. Pursuant to 20 C.F.R. § 30.317, an order of this type does not constitute a "decision" of the FAB on the claim.

b. Decisions Adopting and Affirming the Recommended Decision. The FAB unit in the National Office can also issue a decision without first holding a hearing or reviewing the written record of the claim in the following situations.

(1) Complete Waivers. For cases in which the claimant submits a statement waiving the right to object to the entire recommended decision following transfer of the case to the National Office, the FAB will issue a decision that both adopts the DO's findings and affirms the recommended decision. This type of decision will be accompanied by a cover letter explaining that the FAB's decision will become final in 30 days. The decision is not final for 30 days due to the fact that the claimant may wish to file a reconsideration during that period. If any or all benefits are denied, the case record should remain with FAB during this 30-day period. If a reconsideration is not filed, the file should be returned after 30 days.



4. Responsibilities of the FAB, National Office. (Continued)

(2) Partial Waivers/Partial Objections. If the claimant only waives the right to object to part of the recommended decision, the FAB has the discretion to issue a decision adopting and affirming that part of the recommended decision. The FAB also has the discretion to issue a decision adopting and affirming any part of a recommended decision to which the claimant does not specifically object. These types of decisions will be accompanied by a cover letter explaining that the decision of the FAB only applies to part of the claim and the decision will become final in 30 days. The cover letter also notifies the claimant that the case record will be retained by the FAB until it has acted on the remainder of the claim. If any benefits are denied, the case record should remain with FAB during the 30-day period in which a reconsideration can be filed.

c. Non-local Hearings Conducted by the FAB Unit in the National Office. Cases that are in posture for a non-local hearing will be assigned to a FAB hearing representative in the National Office for further action. (See Chapter 2-1400 for the procedures to be followed in Claims Hearings.)

d. FAB Review of a Dose Reconstruction. The FAB will review the factual determinations upon which NIOSH based its decision.

(1) Factual Findings. Factual findings that do not appear to be supported by substantial evidence, and were not previously reviewed by NIOSH, will be remanded to the DO for a referral to HHS for further consideration.

(2) Methodology. The methodology used by HHS in arriving at reasonable estimates of the radiation doses received by an employee, established by regulations issued by HHS, is binding on the FAB. The FAB reviewer may determine, however, that arguments concerning the application of that methodology should be considered by HHS and may remand the case to the DO for re-referral to HHS for such consideration.

Claimant Name:

Claimant SSN:

Dear

As a beneficiary under the Energy Employees Occupational Illness Compensation Program Act you are entitled to medical benefits for treatment of your [accepted condition - e.g. cancer]; ICD-9 code [ ]. Your entitlement to these benefits is retroactive to [date] . Covered medical services are payable in accordance with fee schedules and medical policy of the Energy Employees Occupational Illness Compensation Program (EEOICP). The policy includes coverage of medical appointments, hospitalizations, appliances, supplies and drugs that are prescribed by a qualified physician and approved by the EEOICP.

When you receive medical treatment you should show this letter to the medical provider you wish to designate as your treating physician and any other authorized medical provider who may treat you for your covered conditions. Most physicians, hospitals, durable medical equipment suppliers and other health care providers will bill the Energy Employees Occupational Illness Compensation Program directly so that you will not have to pay for medical treatment covered under the program. To bill directly, providers must be enrolled in the program. For information about enrollment and billing procedures, providers may contact the Program at the address and telephone number listed at the end of this letter.

**Note:** if the EEOICP pays less than the billed amount (in accordance with the fee schedule), you are not responsible for payment of the difference to a provider. Providers (and claimants) may submit requests for reconsideration of fee determinations in writing, with accompanying documentation to the address supplied at the end of this letter.

The Energy Employees Occupational Illness Compensation Program will reimburse you for the cost of covered services/items that you have personally paid, providing that you submit appropriate documentation to the program's billing address. However, bills and requests for reimbursement must be sent to EEOICP within one year after the end of the calendar year in which the service or supply was provided, or within a year after the end of the calendar year in which your condition was accepted, whichever is later.

To request reimbursement of medical expenses associated with treatment of your accepted condition you are required to complete and submit the **EE-915 form, Claim for Medical Reimbursement Under Energy Employees Occupational Illness Compensation Program Act**. You should also complete and submit the **OWCP-957, Medical Travel Refund Request** form with appropriate receipts when seeking reimbursement for travel expenses covered under the program. Both the EE-915 and OWCP-957 forms (copies enclosed for your convenience) include instructions for when you should complete these forms and the documentation required to process your request for reimbursement.

All requests for reimbursement of covered treatment related expenses including travel are to be mailed to:

U.S. Department of Labor  
Employment Standards Administration  
Energy Employees Occupational Illness  
Compensation Program  
P.O. Box 727  
Lanham-Seabrook, MD 20703-0727

If providers have questions regarding submission or payment of bills, or require any other medical bill program assistance, they may contact a representative, toll free, at 866-272-2682.

Sincerely,

Claims Examiner